



The Agenda

Retirement Pension Committee
February 9, 2012
3:30 PM

CALL TO ORDER

CONSENT AGENDA

- Approval of Minutes – 11/10/11

OLD BUSINESS:

- Core Bond SAGIC Rate – 4.15%

NEW BUSINESS:

- HEART/WRERA and PPC Amendment – resolution adopted as per IRS regulations
- Investment Performance Review – Morgan Stanley Smith Barney
- Quarterly Review

ADDITIONAL ITEMS

- Next scheduled Pension Board Meeting May 10, 2012– at 3:30pm

ADJOURNMENT

Retirement Pension Committee

Allen McCarty, Chairman - Jack Krakeel, Vice Chairman
Connie Boehnke, Wayne Hannah, Allen McCullough, Tony Parrott

Staff Members

Lewis Patterson, Lori Smith

Meeting Location

Commissioners Conference Room
Administrative Complex
140 Stonewall Avenue
Fayetteville, GA 30214



Minutes

Retirement Pension Committee

November 10, 2011

3:30 P.M.

The Retirement Pension Committee met on November 10, 2011 at 3:30p.m. in the Commissioner's meeting room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Committee Present:

Allen McCarty, Commissioner
Jack Krakeel, County Administrator
Connie Boehnke, Human Resources Director
Allen McCullough, Fire & EMS Director
Tony Parrott, Director of Water System
Wayne Hannah, Sheriff

Committee Absent:

Staff Present:

Lewis Patterson, Assistant Human Resources Director
Lori Smith, Benefits Administrator

Retirement Representatives Present:

Jim Fallon, Senior Vice President, Morgan Stanley
Neal Kaplan, CFA Financial Advisor, Morgan Stanley
Chad Smith, Business Partner, Morgan Stanley
Tracy Wells, Morgan Stanley

Call to Order - Commissioner McCarty called the meeting to order.

Approval of Minutes - The meeting minutes for 8/11/11 were approved. Tony Parrott made the motion to adopt the minutes and Wayne Hannah seconded.

Old Business:

Core Bond SAGIC Rate

Jim Fallon reviewed the Core SAGIC Bond Rate of 4.20% with the committee. This was for the fourth quarter.

QDRO – Qualified Domestic Relations Orders further discussion (fees, administration)

Further discussion was made to clarify fees and administration responsibilities of Mass Mutual. Connie Boehnke stated that Mass Mutual will be reviewing the QDRO and making sure that it is in compliance in order to ensure it is processed correctly. A motion was made by Jack Krakeel and seconded by Allen McCarty to have Mass Mutual review and administer QDRO orders. Motion was approved.

New Business:

Investment Performance Review 3rd Quarter – Morgan Stanley Smith Barney – Chad Smith

Chad Smith gave a summary what happened in the third quarter was a repeat of 2010. He stated that we entered into a period of concern about the European market and debts with a potential for default in Europe. There was also talk about a double dip recession in the summer of 2010. We have been repeating that during the third quarter with fresh fears of the European issues with a heightened amount of uncertainty, anxiety and fear. Another big factor was the potential of the US to default. All of that combined has caused a very strong down draft within the markets.

Chad Smith went on to state that there is a “fear of the unraveling of the economic system”. He stated that even though there is that fear, there is not an unraveling of the European market. The Feds have continued to pour a lot of liquidity into the economy. There are still long term trends that are supporting secular economic growth.

Morgan Stanley Investment 3rd Quarter Review 2011

Neal Kaplan reviewed the 3rd quarter 2011.

Market Highlights:

- During the third quarter, the Dow Jones Industrials was down 11.5%.
- NASDAQ declined 12.9%
- S & P lost 13.9%
- The yield on 30yr Treasury bonds fell 2.9%

Fayette County 401(a) Plan Highlights:

- The Fayette County 401(a) portfolio decreased approximately 7.74% during the quarter ending September 30, 2011. This drop was about 0.25% worse than the benchmark's loss of 7.49% on a weighted average over the same period.
- All asset classes other than the Core Bond SAGIC posted declines in the third quarter.
- During the quarter, the Core Bond SAGIC, the large cap, mid cap and small cap equities outperformed their respective benchmarks, while fixed income, the asset allocation/target date funds, international/global and the real estate fund underperformed.
- For the one year period ending September 2011, the Fayette County 401(a) portfolio rose .52%, 33 basis points better than the benchmark's rise of 0.19%.

Fayette County 457(b) Plan Highlights:

- The Fayette County 457(b) portfolio decreased approximately 8.06% during the quarter ending September 30, 2011. This drop was 0.26% worse than the benchmark loss of 7.80% on a weighted average over the same period.
- All asset classes other than the Core Bond SAGIC posted declines in the third quarter.
- During the quarter, the Core Bond SAGIC, the large cap, mid cap and small cap equities outperformed their respective benchmarks, while fixed income, the asset allocation/target date funds, international/global and the real estate fund underperformed.
- For the one year period ending September 2011, the Fayette County 457 portfolio rose 1.49%, 12 basis points better than the benchmark's rise of 0.37%.

Neal Kaplan reviewed the following:

- Fayette County Plan Diversification - Current Investment options
 - Fayette County Plan Relative Performance
 - Fayette County Plan Report Card
 - Fayette County Plan Watchlist
- There are currently no funds on the Fayette County Watchlist. During the third quarter, no actively managed funds posted scores below the acceptable level of 6. Following four quarters at level 6 and also underperforming the benchmarks, the board should entertain alternatives to the American Fund Growth Fund of America and INVESCO Van Kampen Small Cap Growth. Potential candidates for consideration will be provided at the next meeting.

Jim Fallon stated that he is ramping up his team to work closer with the County. He stated that they will be having seminars to work with our people towards planning for a successful retirement.

The next meeting is scheduled for February 9, 2012.

Adjournment

Minutes prepared by Lori Smith,
Benefits Administrator

The minutes were duly approved at an official meeting of the Retirement Pension Board of Fayette County, Georgia held on _____.

Lori Smith, Benefits Administrator



Ms. Connie Boehnke
Director of Human Resources
Fayette County Board of Commissioners
140 Stonewall Avenue West
Fayetteville, Georgia 30214

December 14, 2011

Dear Ms. Boehnke:

Re: 457(b) Amendments for Pension Protection Act and Other Law Changes
60325-2 – Fayette County, Georgia 457(b) Deferred Compensation Plan

IMMEDIATE ACTION REQUIRED

MassMutual's ERISA Advisory ServicesSM has completed two amendments to your 457(b) Governmental Plan to reflect how your plan has been administered under recent changes in the law. This package contains separate plan amendments that require immediate action. Each amendment includes a Certificate of Adopting Resolution if your organization requires one. In addition, we are providing a supplemental explanation of each amendment's provisions to further explain the required and optional provisions and default provisions that apply.

Pension Protection Act Amendment

The first amendment contains changes required by the Pension Protection Act of 2006 (PPA) and an optional change allowed for the definition of post-severance compensation used for contribution purposes.

There is only one provision that requires your review and may require a change to the default election reflected in this amendment. Article III reflects changes made to the definition of post-severance compensation that were included in the Final Section 415 Regulations. A participant may defer from an amount received following severance of employment if the amount satisfies the definition of post-severance compensation. There are some optional elections that a plan may choose when defining post-severance compensation. Please review the default definition in Article III. If this default definition aligns with your contribution practices, you do not need to make any alternate elections in Article III. If your plan uses an alternate definition, please make the elections in the appropriate check boxes. If your plan does not allow participants to make deferral contributions on any compensation paid after severance of employment, please make the election that states, "Article III is not adopted".

Important –Required Timing for the PPA Amendment Execution

The PPA regulations require that the PPA amendment be adopted on or before the last day of the 2011 plan year. For plans with a calendar plan year this means that the PPA amendment should be executed by **December 31, 2011**. Please sign and date the PPA Amendment where indicated.

HEART and WRERA Amendment

The second amendment brings the plan into compliance with the Heroes Earnings Assistance and Relief Act of 2008 (HEART Act) and the suspension of 2009 Required Minimum Distributions as set forth in the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

The HEART Act provides some required and optional benefits to participants who are on a leave of absence for qualified military service. The amendment has been prepared with default provisions. If these default elections align with your practices, you do not need to make any elections in Article II section 2.2.

WRERA allowed Required Minimum Distributions to be suspended for the 2009 distribution year. The amendment has been prepared to reflect that Required Minimum Distributions were suspended for 2009 unless a participant or beneficiary individually elected to receive a distribution for that year. If the default elections align with your practices, you do not need to make any elections in Article II section 2.3.

If your practices do not align with the default provisions elected in this amendment, please send an email to EASConsulting@Massmutual.com and we will revise the amendment.

Required Timing of the HEART and WRERA Amendment Execution

Governmental employers have until the last day of the 2012 plan year to amend for HEART and WRERA. For plans with a calendar plan year this means that the HEART and WRERA amendment should be executed by December 31, 2012. For your convenience, we are sending both amendments at the same time to expedite the amendment process.

ACTION REQUIRED:

Please forward a copy of each signed and dated plan amendment, to MassMutual by **December 31, 2011**. You may email or fax the amendment to:

Email to: EASConsulting@Massmutual.com or
Fax to: (413) 744-6822

If you have any questions please contact your MassMutual service representative.

Thank you for your timely response.

ERISA Advisory Services
MassMutual Financial Group
1295 State Street, MIP B210
Springfield, MA 01111

Enclosures: Pension Protection Act Amendment, HEART and WRERA Amendment

**AMENDMENT FOR
HEART AND WRERA
(457(b) Plan)**

Fayette County Board of Commissioners, as Employer sponsor ("Employer"), adopts this Amendment to the Fayette County, Georgia 457(b) Deferred Compensation Plan ("Plan").

**ARTICLE I
PREAMBLE**

- 1.1 **Effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (*e.g.*, if the Plan is restated onto a plan document which incorporates these HEART and WRERA provisions).

**ARTICLE II
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Sections 2.2 through 2.3 below in order to override the default provisions set forth below.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
 - a. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
 - b. **Differential wage payments are treated as Compensation for all Plan benefit purposes.**
 - c. **The Plan permits distributions pursuant to the HEART Act on account of "deemed" severance of employment.**
 - d. **Required Minimum Distributions (RMDs) for 2009 were suspended unless a Participant or Beneficiary elected to receive such distributions.**

2.2 HEART ACT provisions (Article III).

Continued benefit accruals. Amendment Section 3.2 will not apply unless elected below:

- a. ☐ The provisions of Amendment Section 3.2 apply effective as of: (select one)
1. ☐ the first day of the 2007 Plan Year
 2. ☐ _____ (may not be earlier than the first day of the 2007 Plan Year).

However, the provisions no longer apply effective as of: (select if applicable)

3. ☐ _____.

Differential pay. Differential wage payments (as described in Amendment Section 3.3) will be treated, for Plan Years beginning after December 31, 2008, as compensation for all Plan benefit purposes unless b. is elected below:

- b. ☐ In lieu of the above default provision, the employer elects the following (select all that apply; these selections do not affect the operation of Amendment Section 3.3(ii)):
1. ☐ the inclusion is effective for Plan Years beginning after _____ (may not be earlier than December 31, 2008).
 2. ☐ the inclusion only applies to Compensation for purposes of Elective Deferrals.

Distributions for deemed severance of employment. The Plan permits distributions pursuant to Amendment Section 3.4 unless otherwise elected below:

- c. ☐ The Plan does not permit such distributions.
- d. ☐ The Plan permits such distributions effective as of _____ (may not be earlier than January 1, 2007).

2.3 WRERA (RMD waivers for 2009). The provisions of Amendment Section 4.1 apply (RMDs are suspended unless a Participant or Beneficiary elects otherwise) unless otherwise elected below:

- a. ☐ The provisions of Amendment Section 4.2 apply (RMDs continued unless otherwise elected by a Participant or Beneficiary).
- b. ☐ RMDs continued in accordance with the terms of the Plan without regard to this Amendment (i.e., no election available to Participants or Beneficiaries).
- c. ☐ Other: _____

For purposes of Amendment Section 4.3, the Plan will also treat the following as eligible rollover distributions in 2009: (If no election is made, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H)):

- d. ☐ 2009 RMDs and Extended 2009 RMDs (both as defined in Article IV of this Amendment).
- e. ☐ 2009 RMDs (as defined in Article IV of this Amendment) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

**ARTICLE III
HEART ACT PROVISIONS**

- 3.1 Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

- 3.2 Benefit accrual.** If the Employer elects in Amendment Section 2.2 to apply this Section 3.2, then effective as of the date specified in Amendment Section 2.2, for benefit accrual purposes, the Plan

treats an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

- a. **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 3.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) the actual length of continuous service with the Employer.

- 3.3 **Differential wage payments.** For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code §415(c)(3) and Treas. Reg. §1.415(c)-2 (e.g., for purposes of Code §415, including the definition of post-severance compensation for deferral purposes under Treas. Reg. §1.457-4(d)(1)); and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) (or corresponding plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The Plan Administrator operationally may determine, for purposes of the provisions described in Code §414(u)(1)(C), whether to take into account any deferrals, and if applicable, any matching contributions, attributable to differential wages. Differential wage payments (as described herein) will also be considered compensation for all Plan purposes unless otherwise elected at Amendment Section 2.2.

Section 3.3(iii) above applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

- 3.4 **Deemed Severance.** Notwithstanding Section 3.3(i), if a Participant performs service in the uniformed services (as defined in Code §414(u)(12)(B)) on active duty for a period of more than 30 days, the Participant will be deemed to have a severance from employment solely for purposes of eligibility for distribution of amounts not subject to Code §412. However, the Plan will not distribute such a Participant's account on account of this deemed severance unless the Participant specifically elects to receive a benefit distribution hereunder. If a Participant elects to receive a distribution on account of this deemed severance, then the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution. If a Participant would be entitled to a distribution on account of a deemed severance, and a distribution on account of another Plan provision (such as a qualified reservist distribution), then the other Plan provision will control and the 6-month suspension will not apply.

ARTICLE IV WAIVER OF 2009 REQUIRED DISTRIBUTIONS

- 4.1 **Suspension of RMDs unless otherwise elected by Participant.** This paragraph does not apply if the Employer elected Amendment Section 2.3a, b, or c. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the

Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

4.2 **Continuation of RMDs unless otherwise elected by Participant.** This paragraph applies if Amendment Section 2.3a is selected. Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

4.3 **Direct Rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code §401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009, as elected by the Employer in Amendment Section 2.3, will be treated as eligible rollover distributions. If no election is made by the Employer in Amendment Section 2.3, then a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

IN WITNESS WHEREOF, the Employer has executed this Amendment on this 21st day of December, 2011.

Fayette County
Employer

By: [Signature]
[Signature]

Jack Krakeel, County Administrator
[Print Name, Title]

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of Fayette County (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on December 21, 2011, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, the HEART/WRERA Amendment to the Fayette County Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: January 12, 2011

Signed: Herbert Frady

Herbert Frady, Chairman
[print name/title]

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of Fayette County (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on December 21, 2011, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, the PPA Amendment to the Fayette County Plan (the Amendment) is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: January 12, 2011

Signed: Herbert Frady
Herbert Frady, Chairman
[print name/title]

**AMENDMENT FOR
PPA AND POST-SEVERANCE COMPENSATION
(457(b) Plan)**

Fayette County Board of Commissioners, as Employer sponsor (“Employer”), adopts this Amendment to the Fayette County, Georgia 457(b) Deferred Compensation Plan (“Plan”).

RECITALS

Recent law changes, including the Pension Protection Act of 2006 (“PPA”), affect the Plan; and

The Plan gives the Employer the authority to make amendments to the Plan, and the Employer wishes to update the Plan for law changes currently in effect.

The Employer therefore amends the Plan by adding the following provisions to the Plan:

**ARTICLE I
PREAMBLE**

- 1.1 **Adoption and effective date of Amendment.** The Employer adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer’s election.** The Employer adopts all Articles of this Amendment, except those Articles which the Employer specifically elects not to adopt.
- 1.4 **Construction.** Any “Section” reference in this Amendment refers only to this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to the Plan article, section or other numbering designations.

**ARTICLE II
DEFINITION OF UNFORESEEABLE EMERGENCY**

- 2.1 **Application.** Effective for taxable years beginning after December 31, 2001, this Article II applies only if the Plan permits a distribution to a Participant on account of an unforeseeable emergency.
- 2.2 **Definition of unforeseeable emergency.** An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Participant’s Beneficiary, or the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B)); (2) loss of the Participant’s or Beneficiary’s property due to casualty; (3) the need to pay for the funeral expenses of the Participant’s or Beneficiary’s spouse or dependent (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant’s or Beneficiary’s control.

- 2.3 **Definition of Beneficiary.** The Participant's Beneficiary is a person who a Participant designates and who is or may become entitled to a Participant's Plan account upon the Participant's death.

ARTICLE III DEFERRALS FROM POST-SEVERANCE COMPENSATION

Default Definition: *This Article III provides that in the absence of an alternative election by the Employer: (1) a Participant may defer (or the Employer may make Employer contributions to the Plan) from regular pay (as described in Section 3.2(a)) and from leave cashouts and deferred compensation (as described in Section 3.2(b)), but not from salary continuation payments for military service Participants (as described in Section 3.2(c)) or from salary continuation payments for disabled Participants (as described in Section 3.2(d)).*

Optional Definition Elections: *The Employer may reverse any of these default elections, by checking the appropriate box. If the Employer elects in Section 3.2(d) to include salary continuation payments for disabled Participants, the Employer **also** must elect whether to apply the provision only to non-highly compensated Participants, or to apply the provision to all Participants for the fixed or determinable period specified in the election in Section 3.2(d)(1), and may apply Section 3.2(d) only if the Employer's disability plan actually provides disability compensation to all Participants.*

Election Not to Adopt Article III: *If the Plan currently does not permit (and the Employer does not wish to permit) deferrals from **any** compensation following Severance from Employment (including a Participant's last paycheck received after the date of severance), the Employer should check "Article III is not adopted" below.*

- 3.1 **Post-severance deferrals limited to Post-Severance Compensation.** For taxable years beginning after December 31, 2001, deferrals are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation as defined in Section 3.2.
- 3.2 **Post-Severance Compensation defined.** Post-Severance Compensation for purposes of this Article III includes the amounts described in (a) and (b) below, paid after a Participant's Severance from Employment with the Employer, but only to the extent such amounts are paid by the later of 2½ months after Severance from Employment or the end of the calendar year that includes the date of such Severance from Employment. The Employer, by its election in this Amendment, may elect to *exclude* from the definition of Post-Severance Compensation the amounts described in (a) or (b) below. The Employer, by its election in this Amendment, also may elect to *include* in the definition of Post-Severance Compensation the amounts described in (c) or (d) below, or both.
- (a) **Regular pay.** Post-Severance Compensation *includes* (unless the Employer elects either in (a)(1) or in (a)(2) below not to include some or all of the amounts described in this (a)) regular pay after Severance of Employment if: (i) the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and (ii) the payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer. *(Choose only one of (1) or (2), if applicable).*

- | (1) **Election not to include regular pay.** The Employer elects not to include any of the amounts described in this Section 3.2(a) as Post-Severance Compensation.

- [] (2) Election to include last paycheck ONLY.** Of the amounts described in this Section 3.2(a), the Employer elects to include only such amounts that are included in the final paycheck paid to the Participant at the end of the pay period that includes the Participant's date of severance from employment.

Note: The Employer may modify the provisions of this election to conform to the Employer's particular pay practices (for example, to include a separate bonus check paid to the employee on the same day as the final paycheck).

- (b) Leave cashouts and deferred compensation.** Post-Severance Compensation *includes* (unless the Employer elects in (b)(1) below not to include all of the amounts described in this (b)) leave cashouts if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. In addition, Post-Severance Compensation includes payments of deferred compensation if the compensation would have been included in the definition of Compensation if it had been paid prior to the Participant's Severance from Employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income.

- [] (1) Election not to include leave cashouts and deferred compensation.** The Employer elects not to include any of the amounts described in this (b) as Post-Severance Compensation.

- (c) Salary continuation payments for military service Participants.** Post-Severance Compensation does *not* include (unless the Employer elects (c)(1) below to include all of the amounts described in this (c)) payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service (as described in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service.

- [] (1) Election to include salary continuation payments for military service Participants.** The Employer elects to *include* all of the amounts described in this (c) as Post-Severance Compensation.

- (d) Salary continuation payments for disabled Participants.** Post-Severance does *not* include Compensation paid to a Participant who is permanently and totally disabled (as defined in Code §22(e)(3)) (unless the Employer elects (d)(1) below to include all of the amounts described in this (d)). If elected, this provision will apply either only to non-highly compensated Participants or to all Participants for the fixed or determinable period specified in Section 3.2(d)(1)(ii) below.

- [] (1) Election to include salary continuation payments for disabled Participants.** The Employer elects to *include* all of the amounts described in this (d) as Post-Severance Compensation. In addition, this provision will apply as follows (*Choose only one of (i) or (ii)*):

- [] (i) Non-highly compensated only.** This provision applies only to disabled employees who are non-highly compensated employees immediately before becoming disabled.

- [] (ii) Fixed or determinable period.** This provision applies to all employees who are permanently and totally disabled, for the following period: _____
(e.g., for a period of two years from the date of the disability). *Note: The election in*

this Section 3.2(d)(1)(ii) applies only if the Employer's disability plan actually provides disability payments to all permanently and totally disabled Participants]

- 3.3 **Limitation on Post-Severance Compensation.** Any payment of Compensation paid after Severance of Employment that is not described in Section 3.2(a), (b), (c) or (d) above is not Post-Severance Compensation, even if payment is made by the later of 2½ months after Severance from Employment or by the end of the calendar year that includes the date of such Severance of Employment.

If the Employer operationally has not permitted deferrals from any Post-Severance Compensation, the Employer should check "Article III is not adopted" below.

- ☐ **Article III is not adopted.** The Plan does not permit any deferral contributions from any amount a participant receives following Severance from Employment.

ARTICLE IV QUALIFIED DOMESTIC RELATIONS ORDERS

- 4.1 **Permissible QDROs.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 4.2 **Other QDRO requirements apply.** A domestic relations order described in Section 4.1 is subject to the same requirements and protections that apply to QDROs.

ARTICLE V PARTICIPANT DISTRIBUTION NOTIFICATION

- 5.1 **180-day notification period.** For any distribution notice issued in plan years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code §402(f) (the rollover notice relating to an eligible rollover distribution), means 180 days.

ARTICLE VI DIRECT ROLLOVER OF NON-SPOUSE BENEFICIARY DISTRIBUTION

- 6.1 **Non-spouse beneficiary rollover right.** For distributions in plan years beginning after December 31, 2009, and unless otherwise elected in Section 6.1a below, for distributions after December 31, 2006, a non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account ("IRA") the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- a. ☒ For distributions after December 31, 2006, and prior to the first day of the first plan year beginning after December 31, 2009 (select one):

1. ☐ Non-spousal rollovers are not allowed.
 2. ☒ Non-spousal rollovers are allowed effective **January 1, 2010** (not earlier than January 1, 2007 and not later than January 1, 2010).
- 6.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 6.1, any distribution made prior to the first day of the first plan year beginning after December 31, 2009, is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a “60-day” rollover.
- 6.3 **Trust beneficiary.** If the Participant’s named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).
- 6.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary’s distribution.

ARTICLE VII DIRECT ROLLOVER TO ROTH

- 7.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a Participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b).

Except as provided in this Amendment, the Plan remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the Employer has executed this Amendment on this 21st day of December, 2011.

Fayette County
Employer
By: [Signature]
[Signature]
JACK Krakeel, County Administrator
[Print Name, Title]